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## Wisconsin Ethics Opinion E-90-04: Interest Charges on Delinquent Accounts

*Revised April 17, 2020*

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### **Question:**

May a lawyer or law firm include in its fee agreements or engagement letters the following: “Our invoices for services and advanced costs are due and payable within 30 days from the invoice date. Failure to pay those charges within that time will result in an interest charge of 1 percent on the unpaid balance per month thereafter.” All billing statements would include similar language.

### **Opinion:**

SCR 20:1.5(a) requires that lawyers’ fees be reasonable, and it has long been recognized that lawyers may charge a reasonable rate of interest on delinquent fee balances.<sup>1</sup> Similarly, a reasonable rate of interest on delinquent balances on advanced costs is permissible.<sup>2</sup> The State Bar’s Standing Committee on Professional Ethics (the “Committee”) likewise believes that it is permissible to charge interest on delinquent fee and cost balances, provided that the interest charged is reasonable and the client has been given advance notice of the lawyer’s policy regarding interest on delinquent balances, usually in the lawyer’s engagement agreement.

SCR 20:1.5(a) provides a list a factors to be considered in evaluating the reasonableness of a lawyer’s fee, but these factors are not easily applied to interest charged on delinquent balances. The lawyer, however, in considering an appropriate rate of interest on delinquent balances, should bear in mind that SCR 20:1.5(a) requires that the *total* amount of fees and the *total* amount of costs be reasonable, and that makes it difficult to assign a precise numerical range of acceptable interest rates. The proposed rate of one percent per month comports with the amount charged on delinquent taxes,<sup>3</sup> and in the opinion of the Committee, is not outside the realm of reasonable rates of interest for delinquent balances. The Committee takes no position

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<sup>1</sup> See e.g. Arizona Ethics Opinion 2000-07 (2000); Connecticut Informal Ethics Opinion 99-26 (1999); Michigan Informal Ethics Opinion RI-40 (1989); Montana Ethics Opinion 24 (1981); New York City Ethics Opinion 82-6; Virginia Ethics Opinion 1247 (1989).

<sup>2</sup> See New York State Ethics Opinion 1181 (2020).

<sup>3</sup> See Wis. Stat. 71.82(1).

in this opinion on whether higher rates would be reasonable or whether certain circumstances may call for different rates in order to meet the reasonableness standard.

SCR 20:1.5(b) requires that lawyers communicate “the basis or rate of the fees and expenses for which the client will be responsible” in writing before or within reasonable time of commencing the representation.<sup>4</sup> The “basis or rate of the fees and costs for which the client may be responsible” includes any interest charges that may be imposed on delinquent balances and must therefore be communicated to the client before or within a reasonable time of commencing the representation. While SCR 20:1.5(b) does not require that the communication be in the lawyer’s engagement agreement, most lawyers will find that convenient. In the opinion of the Committee, the proposed clause meets the requirements of SCR 20:1.5(b).

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<sup>4</sup> If it is reasonably foreseeable that the total cost of the representation to the client will be less than \$1000, the communication of “the basis or rate of the fees and expenses for which the client will be responsible” may be made orally. Lawyers may wish to always document their fee and costs arrangements with clients as one Wisconsin court has held that a lawyer may not collect interest charged on unpaid fee balances when the lawyer did not have a clause permitting the interest charges in the lawyer’s engagement agreement. *Ziolkowski v. Great Lakes Dart Manufacturing, Inc.*, 2011 WI App. 11, 794 N.W.2d 253.